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IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

MEDALLION OIL COMPANY, *et al.*,
Petitioners,

v.

TRANSAMERICAN NATURAL GAS CORPORATION, *et al.*,
Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

REPLY BRIEF FOR PETITIONERS

THOMAS GIBBS GEE
FINIS E. COWAN
BAKER & BOTTS, L.L.P.
One Shell Plaza
910 Louisiana
Houston, TX 77002
(713) 229-1198

FRANK DOUGLASS
ELIZABETH N. MILLER
SCOTT, DOUGLASS & LUTON
One American Center
600 Congress Avenue
Austin, TX 78701
(512) 495-6300

E. EDWARD BRUCE*
ELLIOTT SCHULDER
ANNA P. ENGH
COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
Post Office Box 7566
Washington, D.C. 20044
(202) 662-6000

Attorneys for Petitioners
* Counsel of Record

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ARGUMENT

In the petition, Medallion demonstrated that review is warranted here because the lower courts are badly in need of guidance from this Court concerning the appropriate criteria that should govern certification decisions, and because, even in the absence of such criteria, the courts

need to be reminded that an abuse of discretion standard requires reasoned decisionmaking. In its brief in opposition, TransAmerican ignores these basic points and focuses instead on a few side issues, which can be dealt with briefly.

1. TransAmerican disingenuously asserts that this case involves only a question of contract construction – *i.e.*, whether the agreements between Medallion and TransAmerican and between TransAmerican and El Paso contained express surrender clauses; according to TransAmerican, the Court of Appeals "did not address property law issues at all." (Br. in Opp. 8)

This is not simply a contract case. Medallion does not contest the lower courts' construction of the various agreements as containing surrender clauses. Rather, the dispositive question is the significance of a surrender clause under Texas law. More precisely, the issue that Medallion urged the Court of Appeals to certify to the Texas Supreme Court is whether – notwithstanding an express surrender clause – an overriding royalty interest continues, when production continues, upon the surrender of a lease or the conversion of a lease into a fee.

The effect of a surrender clause in this situation presents an issue of Texas oil and gas property law, with major ramifications for numerous persons with interests arising from oil and gas leases within the State. This is precisely the sort of intensely local issue that is especially suited for certification. Moreover, the enormous importance of the issue is evidenced by the briefs *amici curiae* filed by the State of Texas, the Independent Bankers Association of Texas and the Texas Independent Producers and Royalty Owners Association. These *amici*, like Medallion, all read

the opinion below as having been grounded on principles of state property law rather than, as TransAmerican would have it, on a technical issue of contract interpretation.[1]

2. TransAmerican contends that Medallion was dilatory in raising the certification question until rehearing. (Br. in Opp. 10-11) But Medallion explained in the petition (p. 11 n.4) the reasons why it deferred its request for certification until rehearing, and TransAmerican does not dispute those reasons.

Moreover, the mere fact that certification to state court was not sought until rehearing provides no basis whatever for denying certification. As noted in the petition, in both *Lehman Brothers v. Schein*, 416 U.S. 386 (1974), and *Frey v. Amoco Prod. Co.*, 951 F.2d 67 (5th Cir. 1992), certification was granted even though it had not been sought until the rehearing stage in the court of appeals. Indeed, as noted by the Texas Attorney General in his *amicus* brief (p. 5), the court of appeals panel in *Frey* certified a question to the Louisiana Supreme Court, even though more certain of its application of state law than the panel below, because of that case's "tremendous consequences for Louisiana's gas

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[1] In a futile effort to support its position that this case turns on a narrow contract issue, TransAmerican mischaracterizes the holding of the Court of Appeals by suggesting that the court did not choose between *Sunac Petroleum Corp. v. Parkes*, 416 S.W.2d 798 (Tex. 1967), and *Cain v. Neumann*, 316 S.W.2d 915 (Tex. Civ. App. 1958), the two Texas court decisions that addressed the property law question on which Medallion sought certification. But the court, in its opinion on rehearing, made clear that, while it viewed neither *Sunac* nor *Cain* as controlling, it chose to follow *Sunac*. Pet. App. 13a ("we conclude that, as far as our case is concerned, the greater force of authority is found in . . . *Sunac*").

industry and its citizens who own mineral interests in Louisiana real estate." 951 F.2d at 67. Precisely the same reasoning requires certification of the state law question in this case.

3. TransAmerican seeks to minimize the significance of the certification issue by claiming that all that is involved here is the Court of Appeals' failure to follow its own precedent in *Florida ex rel. Shevin v. Exxon Corp.*, 526 F.2d 266 (5th Cir.), *cert. denied sub nom. Standard Oil Co. v. Florida*, 420 U.S. 829 (1976). (Br. in Opp. 11-12) This argument misses the point of the petition.

TransAmerican does not dispute Medallion's contention (Pet. 13) that the lower federal courts have reached opposite conclusions with respect to certifying virtually identical state law questions. Given this disarray, the time is ripe for this Court, twenty years after *Schein*, to provide guidance to the lower courts in making certification decisions. The *Shevin* case was offered as a possible source of criteria for that purpose, because it has been so applied by other circuits.[2] Obviously, Medallion does not invoke this Court's certiorari jurisdiction to complain of a court of appeals' failure to follow circuit precedent.

4. Finally, we note that TransAmerican does not even attempt to defend the Court of Appeals' transparently flawed reasons for choosing to follow *Sunac* rather than *Cain*, instead of certifying the state law question to the Texas Supreme Court. The court's observation that the

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[2] *See, e.g., Hatfield v. Bishop Clarkson Memorial Hosp.*, 701 F.2d 1266, 1268 (8th Cir. 1983) (certifying state law question on rehearing *en banc*).

agreements in this case contained an express surrender clause merely begs the question decided by *Cain*, and the court plainly erred in holding Medallion at fault in a summary judgment context for not anticipating an element of proof that the court derived from *Sunac*. In view of the clear error in denying certification here, we reiterate (Pet. 19) that this Court may wish to consider summary disposition to remind the lower courts of the need to engage in reasoned decisionmaking in deciding certification questions.

CONCLUSION

For the foregoing reasons and those set forth in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted,

Thomas Gibbs Gee
Finis E. Cowan
Baker & Botts, L.L.P.
One Shell Plaza
910 Louisiana
Houston, TX 77002
(713) 229-1198

Frank Douglass
Elizabeth N. Miller
Scott, Douglass
& Luton
One American Center
600 Congress Avenue
Austin, TX 78701
(512) 495-6300

E. Edward Bruce*
Elliott Schulder
Anna P. Engh
Covington & Burling
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